

State of Illinois

Illinois Commerce Commission

Illinois Commerce Commission)	
On its own motion)	
)	
Proceeding to monitor the ongoing)	Docket No. 03-0056
Development of the marketplace for)	
Commonwealth Edison Customers)	

**Staff of the Illinois Commerce Commission's reply to
Brief on Exceptions of Commonwealth Edison**

Now comes the staff of the Illinois Commerce Commission ("Staff" and "Commission") and replies to the Brief on Exceptions of Commonwealth Edison ("ComEd's Exceptions") in this proceeding.

ComEd's Exceptions remind that

ComEd requested (1) that the Commission specify that, absent further action by the Commission, the reporting requirements established in this docket terminate with the end of the mandatory transition period, and (2) that in order to limit the potential restrictions of the ex parte rules on Commissioners' ability to solicit and receive information on the developments in the electric market, the Commission (a) close this proceeding or, in the alternative, (b) clarify that it is only the reporting requirements themselves that the subject of this docket and no the interpretation of the data collected or the status of the market.

(ComEd's Exceptions, page 1.)

I. "Termination of the Reporting Requirements"

Commonwealth Edison Company ("ComEd") continues to portray the end of the Public Utilities Act's mandatory transition period for retail electric services as introducing myriad market changes that increase the appeal of competitive choice for these services. It notes that "the freeze on ComEd's bundled rates might be moved to a level that make competitive choice and additional competitive entry more attractive" and that "customer transition charges, applicable to customers who leave ComEd's bundled service will be eliminated."

(ComEd's Exceptions, page 2.) Staff's challenges to these assertions at Staff of the Illinois Commerce Commission's reply to Initial Comments of Commonwealth Edison ("Staff's Reply to ComEd"), pages 1-3 remain applicable.

While Staff agrees that the end of the mandatory transition period may make competitive options in ComEd's service territory more attractive, Staff still disagrees with ComEd's suggestion "that these newly competitive conditions warrant the automatic end of Commission market-monitoring efforts." (Staff's Reply to ComEd, page 2.) Staff repeatedly notes, and the Administrative Law Judge's Proposed Second Interim Order ("ALJPSIO") agrees, that the Commission, in its Order Initiating Proceeding, clearly indicates that it "intends to track the nature of the competitive market on a forward-going basis" and that the present proceeding "will serve as a forum and mechanism for the Commission's consideration and monitoring of competitive developments." (Order Initiating Proceeding, page 1, citing Interim Order in docket 02-0479 (ComEd's "Rate 6L Petition"), page 78; Staff's Reply to ComEd, page 2; and ALJPSIO, page 5.) The Commission is clear that it intends to track competitive developments over time, as the market changes and develops.

ComEd apparently believes that the Commission's position, and Staff's recommendation that reporting requirements be maintained, is "based on the presumption that there will be no structural change to the marketplace[.]" (ComEd's Exceptions, page 2.) ComEd is incorrect, as it points out in its own citation to the Commission's "Section 16-120 Report[.]" The Section 16-120 Report shows that the Commission and its Staff are well aware that the market will see significant structural changes in the near future. While Staff expects that many of the anticipated changes will improve the retail-competition environment, it also recognizes that there is still considerable uncertainty as to how the market will respond to these changes. (Staff's Reply to ComEd, page 2.)

Although the future direction of the competitive wholesale market remains uncertain, Staff is concerned with ComEd's assurances that the utility will soon be integrated into PJM Interconnection, L.L.C.'s ("PJM") regional transmission organization and that "uncertainties with PJM integration will have been largely worked out long before 2007." (ComEd's Exceptions, page 2.) Since ComEd highlights these PJM possibilities, Staff reminds the Commission that, as history has shown, ComEd's eternal optimism about joining a fully operational regional transmission organization is repeatedly misplaced. PJM is the third regional transmission organization that ComEd attempts to join or develop in as many years; Staff understands that, following the "August 2003 East Coast blackout," PJM has announced that, at least temporarily, ComEd's integration into PJM is postponed.

Staff's wholesale-market concerns do not end with ComEd's PJM challenges. While potential integration with PJM may provide positive competitive developments, "the introduction of PJM may also bring problems to

the extent that it creates rifts in the Midwest's wholesale market." (Staff's Reply to ComEd, page 2.) Midwest Independent Transmission System Operator, Inc. ("MISO") and PJM "through and out" rates, coupled with other "seams" issues, may artificially stifle wholesale trade across the system-operator rifts, limiting market development and providing opportunities for the types of market manipulations seen in California's recent energy crisis. With MISO still resolving its market-operation set-up and the present potential for noncontiguous MISO and PJM markets, Staff is concerned that the development of robust wholesale competition may remain a distant possibility. The weak financial condition of several potential suppliers and the Public Utilities Act's "reciprocity" conditions similarly challenge market development. (Staff's Reply to ComEd, page 2.)

While the end of the mandatory-transition period offers the possibility of positive competitive development, Staff still believes that there are sufficient reasons for the Commission to continue its market observations beyond this time.

The end of the mandatory transition period does not end the retail market's evolution in ComEd's service territory, nor does it eliminate concerns about market direction or the state of competition generally. Accordingly the Commission should continue to receive market information past the end of the transition period until it determines that a viable competitive environment renders formal monitoring unnecessary.

(Staff's Reply to ComEd, page 3.) Accordingly Staff endorses the ALJSIPO's conclusions regarding continued reporting requirements and asks that the contrary recommendations in ComEd's Exceptions be disregarded.

II. "Resolution of Ex Parte Issues"

Staff recognizes "that ex parte restrictions, coupled with the ongoing nature of market monitoring, may limit informal communications between ComEd, commissioners, and certain parties regarding issues specific to the '3 megawatt' customer market." (Staff Reply to ComEd, page 3.) Accordingly Staff respects the *ex parte* limitations the Order Initiating Proceeding establishes and the ALJSIPO endorses, particularly given the Commission's clarity regarding this proceeding's generous scope:

By initiating this proceeding, the Commission intends to track the nature of the competitive market on a forward-going basis. *This proceeding will serve as a forum and mechanism for the Commission's consideration and monitoring of competitive developments.* The findings within the market monitoring proceeding may lead the Commission to determine that Rate 6L for customers 3MW and greater is either competitive or not

competitive. Moreover, by initiating this proceeding now rather than later, the Commission is able to promptly address any deterioration in competitive conditions.

(Order Initiating Proceeding, page 1, citing Interim Order in ComEd's Rate 6L Petition, page 78; Staff's Reply to ComEd, page 3; and ALJPSIO, page 5; emphasis added.) The Order Initiating Proceeding is clear that this market-monitoring proceeding is *the* venue in which the 3-megawatt market is considered. Market-monitoring, broadly defined, is unquestionably within the present scope.

The Order Initiating Proceeding also states the means by which the Commissioners receive market information, recommending that they "be provided with a tentative timeline for Staff to provide periodic monitoring reports during the remaining life of this proceeding." (Order Initiating Proceeding, page 5.) In its subsequent Interim Order, the Commission accepts Staff's recommendation "that it provide an initial written market monitoring report to the Commission by December 31, 2003, using information available at that time" and

that, starting in 2004 and going forward, it provide an annual written market monitoring report 45 days after ComEd and the RESs provide data for the fourth quarter of each year. In all instances Staff remains free to report more frequently if the need arises; reports need not be limited to discussions of data provided through this process. A report may, for example, examine the state of the wholesale market.

(Interim Order in this proceeding, pages 6 and 7.) The Commission does not entertain informal updates from the parties regarding market status, nor does it limit the present proceeding to the establishment of reporting requirements alone. The Commission anticipates Staff's provision of market information through formal reports and, presumably, the parties' formal responses to information provided.

The Commission approach offers considerable advantages. Staff already notes that

Maintaining discussions within the formal framework of a Commission proceeding ensures that all parties have equal voice in every debate. When arguments, points of contention, and facts enter the public record, all parties have knowledge of all matters and may respond accordingly. When statistics, facts, and arguments are subject to public scrutiny and verification, the Commission and all parties benefit.

(Staff's Reply to ComEd, page 4.) The ALJSIPO expressly endorses Staff's perspective (ALJSIPO, page 5).

Admittedly, as ComEd notes, the Commission's orders may have the practical effect of limiting the "ability of Commissioners to individually solicit and receive information on developments in the electric market" (Initial Comments of Commonwealth Edison, page 2), presumably requiring that Commission discussions of the 3-megawatt market only occur in public forums, with all interested parties represented.

As such, the Commission may well limit informal debate. Given Staff's recommendation that market monitoring and data collection continue past the mandatory transition period's end, restrictions on informal discussions may prove challenging. Nonetheless Staff agrees with the ALJSIPO that "ComEd's desire to hold informal meetings with the Commissioners [is] an insufficient reason to contradict our purpose for initiating this proceeding." (ALJSIPO, page 5.)

Accordingly Staff endorses the ALJSIPO's conclusions regarding *ex parte* issues and asks that the contrary recommendations in ComEd's Exceptions be disregarded.

Wherefore, for reasons set forth above, Staff respectfully requests that the Commission not adopt ComEd's Exceptions

Respectfully submitted,

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